

During the personal interview of June 11, 2002, the Examiner asserted that he is "unaware of any desire --either expressly or implicitly-- by Applicant(s) to be their own lexicographer and define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the presumption that all claim limitations are given their ordinary and accustomed meaning." That is, the Examiner interprets the term "first data", "second data" and "third data" as the name of the store, total amount and type of transaction, respectively, as disclosed in Claus et al. However, Applicant respectfully submits that "the words of a claim must be given their plain meaning unless Applicant has provided a clear definition in the specification." MPEP 2111.01. Moreover, "claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their broadest reasonable interpretation." *In re Marosi*, 710 F.2d 799, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). *See also Eastman Kodak Co. v. Zimmer Aktiengesellschaft*, 42 USPQ2d 1737 (Fed. Cir. 1997) (specification and other extrinsic evidence used to interpret claims).

For example, the first data may represent software, MIDI (Musical Instrument Digital Interface), map information, news, financial market news and/or equivalents, as disclosed in Applicant's specification on page 12, lines 12-18. The second data may represent the purchaser's identification inherent data, for example, an identification (ID) number, a password, an age and sex of the purchaser and/or equivalents, as disclosed in Applicant's specification on page 8, lines 3-5. The third data may represent the purchase history data, for example, a title of the purchased product, price of the product, name of the shop at which the product was purchased the date and time at which the product was purchased, the number of writable machines, and/or equivalents, as disclosed in Applicant's specification on page 7, line 31 through page 8, line 2. Further, in claim 28, the only independent claim, first data is defined as that which permits the purchaser to make a purchase requested from a data providing system; second data as identification information of the purchaser; and third data as

purchase information of the first data. Therefore, Claus et al. cannot anticipate the claimed features because the smart card of Claus et al. only provides the name of the store, total amount and type of transaction, which corresponds to Applicant's claimed third data. Accordingly, Applicant respectfully submits that claims 28-55 are to be interpreted in light of what is claimed and of Applicant's specification.

Further, in the Office Action, the Examiner asserts *Bell Atlantic Network Services Inc. v. Covad Communication group Inc.* (herein after "Bell Atlantic") argues that "[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art." However, Applicant respectfully submits that the Examiner has misconstrued the holding in Bell Atlantic. In fact, the holding in Bell Atlantic is precisely the opposite as intended by the Examiner. The court in Bell Atlantic held that "the specification may define claim terms "by implication" such that the meaning may be "found in or ascertained by a reading of the patent documents" and further held that "the ordinary meaning of the non-technical term mode is sufficiently broad and amorphous that the scope of the claim language can be reconciled only with recourse to the written description." Thus, the specification can be read into the claim when defining the terms.

The Office Action further asserts that the functional recitation using the word "for" has been given little patentable weight because they fail to add any steps and thus regarded as intended use language. However, Applicant respectfully submits "there is nothing inherently wrong with defining some part of an invention in function terms. Functional language does not, in and of itself, render a claim improper. A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill and the pertinent art in the content in which it is used" MPEP 2173(g). Applicant respectfully submits that functional languages clearly provides additional steps because it sets definite boundaries on the patent protection sought. *In re Barr*, 444 F.2d 588, 170 USPQ 33 (CCPA 1971).

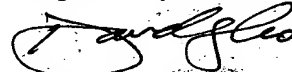
In view of the foregoing Remarks, Applicant respectfully submits that Claus et al. fails to disclose the features recited in independent claim 28. Claims 29-55 which depend from claim 28 are likewise distinguished over the applied art for at least the reasons discussed above as well as for the additional features they recite. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102 are respectfully requested.

Conclusion

In view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of claims 28-55 are respectfully requested.

Should the Examiner believe that anything further is necessary to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,



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